

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



IN THE MATTER OF)
)
MSC.SOFTWARE CORPORATION,)
)
a corporation)
)
_____)

Docket No. 9299

**THIRD-PARTY ANSYS, INC.'S MOTION TO EXTEND TIME TO
RESPOND AND/OR MOVE TO LIMIT OR QUASH SUBPOENA
DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION**

Third party, ANSYS, Inc. ("ANSYS") moves, pursuant to Rule 4.3(b) of the Federal Trade Commission's Rules of Practice ("Rules"), to extend the time for ANSYS to respond and/or to move to quash or limit the Subpoena *Duces Tecum* issued on behalf of MSC.SOFTWARE Corporation ("MSC") and served on ANSYS (the "Subpoena").¹ The requested relief is necessary and reasonable in light of the breadth of the Subpoena and service of the Subpoena shortly before the end-of-year holidays. ANSYS requests an order that will give ANSYS adequate time to (i) analyze the Subpoena, (ii) evaluate the burdens and other issues associated with responding, (iii) develop proposals which will eliminate unreasonable burdens while preserving the tribunal's access to material information, (iv) negotiate with MSC in an effort to limit the scope of the Subpoena by agreement and then, (v) produce material documents on a rolling basis under terms that adequately protect the confidentiality of the information and

¹ Attached hereto as Exhibit A.

(vi) move to quash or limit only those aspects of the Subpoena, if any, concerning which ANSYS and MSC cannot agree.

I. BACKGROUND

On December 18, 2001, MSC served the Subpoena on ANSYS via registered mail. The Subpoena was received by ANSYS on December 20, 2001. The return date of the Subpoena is January 4, 2002. The Subpoena is broad by any standard, but is especially broad when considered in light of the fact that the MSC is limited to 100 document requests by the Scheduling Order in this case. See Scheduling Order, dated November 13, 2001, at p.4, ¶3. The "Specifications" consist of twenty-eight numbered paragraphs, containing at least sixty separate document requests (counting subparts). Additionally, the Subpoena contains seven pages of "Instructions" and "Definitions."

Under the Rules, ANSYS is afforded only ten days within which to move to quash or limit the Subpoena. 16 C.F.R. § 3.34(c). Within that ten day period are a Saturday, a Sunday and the Christmas national holiday, as well as other days when numerous employees typically take time off to be with their families. Even if ANSYS is considered a "party" for purposes of Rule 4.3(c), the additional three days afforded in which to file a motion include two weekend days and the day before the New Years national holiday. Due to the breadth of the information requested, the intervening holiday and ANSYS' employees' extensive, competing year-end obligations, there is insufficient time within that ten day period for ANSYS to appropriately analyze the Subpoena and assess the burden and other issues associated with responding. See Affidavit of David S. Secunda in Support of Third Party ANSYS Inc.'s Motion to Extend Time to Respond and/or Move to Limit or Quash Subpoena Duces Tecum Served by MSC Software Corporation ("Secunda Aff.")² Further, the 17 days between the date on which the broad

² Attached hereto as Exhibit B. Mr. Secunda is ANSYS' Corporate Counsel and Secretary.

Subpoena was mailed and the specified return date of January 4, 2002, include four weekend days, two national holidays and the traditional holiday week. Such a period is grossly inadequate to formulate and negotiate a reasonable modification of the Subpoena, as well as to identify, to classify the confidentiality of and to prepare for production of responsive documents.

II. RELIEF REQUESTED

ANSYS seeks an order that would extend its obligations to respond and/or move to quash or limit the Subpoena until January 31, 2002. These extensions would afford ANSYS sufficient time to analyze the Subpoena and evaluate the burdens and other issues associated with responding. ANSYS could then negotiate with MSC in an effort to limit the scope of the Subpoena and address any other issues raised by the Subpoena. ANSYS would produce on a rolling basis responsive materials as to which the parties were able to reach agreement. On or before January 31, 2002, ANSYS would complete its response to the Subpoena to the extent that agreement has been reached and would move to quash or limit only those aspects of the Subpoena, if any, concerning which agreement could not be reached.

III. ARGUMENT

Pursuant to Rules 3.22(d) and 4.3(b), the Administrative Law Judge has the authority to grant extensions of time. The relief requested by ANSYS is reasonable in light of the timing of the service of the Subpoena, the intervening holidays, the breadth of the Subpoena and ANSYS' ongoing year-end business obligations. Furthermore, it will promote judicial economy and will not delay resolution of the case.

As drafted, the Subpoena would require consideration of whether the search for documents would have to comprehend 11 subsidiaries operating in 21 locations, 14 of which are outside the United States. Decisions need to be made regarding which, if any, files need to be searched for the 440 employees of ANSYS and its subsidiaries. Furthermore, systems need to be

developed for reviewing computers and electronic storage media, where appropriate. Finally, the excessively broad definitions employed in the Subpoena would bring within the scope of the Subpoena substantial quantities of information which are immaterial to the litigation and the production of which would impose unnecessary and unreasonable burdens on ANSYS. See Secunda Affidavit at ¶¶ 2-4.

ANSYS requests extensions with respect to the date for moving to quash or limit the Subpoena, as well as with respect to the return date for the Subpoena, in order to attempt to negotiate reasonable limits on the Subpoena and to identify and produce the material information. The requested extensions are reasonable in light of the combination of the intervening holidays and ANSYS' year-end activities. As stated set forth in Mr. Secunda's affidavit, ANSYS' employees do not have sufficient time prior to the new year to adequately evaluate the Subpoena and assess the burdens and other issues associated with responding, let alone to attempt to respond to the Subpoena as drafted. See Secunda Aff. at ¶¶ 5-6. In addition to the problems presented by being served with MSC's exhaustive subpoena in the midst of the holiday period, ANSYS' employees are already busiest during the fourth quarter of the calendar year because that quarter produces the largest share of ANSYS' revenue. See id. Accordingly, its employees are already fully occupied in both procuring and booking that business. Moreover, MSC has itself relied on the unique burdens imposed by year-end discovery requests in seeking relief from several Subpoenas *Ad Testificandum* served on it by the Complaint Counsel in this matter. See MSC.SOFTWARE Corporation's Motion to Quash Subpoenas *Ad Testificandum* Served by the Federal Trade Commission at 3-4, 5. The extension MSC seeks would essentially toll its response obligations until after the first of the year, reflecting the difficulties experienced by many businesses in responding to extensive discovery during this period of the year.

The extension sought by ANSYS will promote judicial economy by providing ANSYS with adequate time both to evaluate the Subpoena and the multitudinous issues associated with responding, and then to attempt to reach an agreement with MSC concerning the

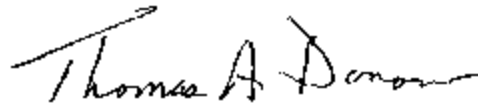
proper scope of the Subpoena. Since ANSYS cannot adequately evaluate all of the issues raised by the Subpoena by year-end, absent this relief there would be a substantial risk that many issues concerning the proper scope of the Subpoena which can otherwise be resolved by the MSC and ANSYS and would needlessly be brought before the Administrative Law Judge.

Finally, the extension will not delay resolution of the matter before the Commission. Under the current Scheduling Order, discovery is scheduled to close on March 8, 2002. Accordingly, the proposed extension provides ample time within which to resolve any issues associated with the Subpoena that cannot be resolved by agreement and complete any subsequent discovery.

IV. CONCLUSION

For all of the foregoing reasons, ANSYS respectfully requests an Order in the attached form, extending ANSYS' obligation to respond and/or move to quash or limit the Subpoena until January 31, 2002.

Respectfully submitted,
KIRKPATRICK & LOCKHART LLP



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Joseph C. Safar, Pa I.D. No. 78205

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535 Smithfield Street
Pittsburgh, PA 15222
Telephone: (412) 355-6500
Facsimile: (412) 355-6501

Counsel for ANSYS, Inc.

Dated: December 28, 2001

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____))
IN THE MATTER OF))
MSC.SOFTWARE CORPORATION,) Docket No. 9299
a corporation))
_____)

ORDER

AND NOW, this __ day of _____, 200__, upon consideration of Third Party ANSYS Inc.'s Motion to Extend Time To Respond and/or Move to Limit or Quash Subpoena *Duces Tecum* Served by MSC.Software Corporation, it is hereby ORDERED, that said motion is GRANTED. ANSYS, Inc. is hereby granted an extension until January 31, 2001 to respond and/or move to quash or limit the Subpoena *Duces Tecum* served on ANSYS Inc. by MSC.Software Corporation.

D. Michael Chappell
Administrative Law Judge

1964-1965

1965-1966



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<p>1. TO ANSYS, Inc. c/o David S. Secunda South Pointe 275 Technology Drive Canonburg, PA 15317</p>	<p>2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
<p>ANSYS, Inc. c/o CT Corporation System 1515 Market Street Suite 1210 Philadelphia, PA 19102</p>	

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION OR INSPECTION Kirkland & Ellis 655 15th Street, NW Washington, DC 20005 (or at a place to be agreed upon)</p>	<p>4. MATERIAL WILL BE PRODUCED TO Marimichael O. Skubel</p>
	<p>5. DATE AND TIME OF PRODUCTION OR INSPECTION January 4, 2002 at 12:00 p.m.</p>

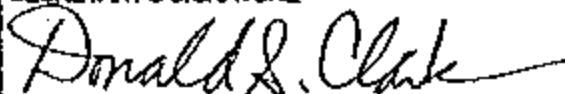
6. SUBJECT OF PROCEEDING

In the matter of MSC Software Corporation, Docket No. 9299

7. MATERIAL TO BE PRODUCED.

See attached Specifications, Definitions and Instructions

<p>8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Clappell Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL REQUESTING SUBPOENA Marimichael O. Skubel Kirkland & Ellis 655 15th Street, NW Washington, DC 20005 (202) 879-5034 Counsel for MSC Software Corp.</p>
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<p>DATE ISSUED DEC 13 2001</p>	<p>SECRETARY'S SIGNATURE </p>
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served. (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

.....

on the person named herein on:

.....
(Month, day, and year)

.....
(Name of person making service)

.....
(Official title)

CERTIFICATE OF SERVICE

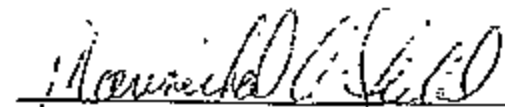
This is to certify that on December 18, 2001, I caused a copy of the attached Subpoena Duces Tecum Issued on Behalf of *MSC Software Corporation* to be sent via registered mail, upon the following persons for service:

ANSYS, Inc.
c/o David S. Secunda
South Pointe
275 Technology Drive
Cantonburg, PA 15317

ANSYS, Inc.
c/o CT Corporation System
1515 Market Street
Suite 1210
Philadelphia, PA 19102

This is to further certify that on December 18, 2001, I caused a copy of the attached Subpoena Duces Tecum Issued on Behalf of *MSC Software Corporation* to be served by hand delivery, upon the following person:

P. Abbott McCartney
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Suite 3033
Washington, DC 20580



Marimichael O. Skubel
Kirkland & Ellis
655 15th Street, N.W.
Washington, DC 20005
Phone: (202) 879-5034
Facsimile: (202) 879-5200

In the Matter of MSC Software Corporation, F.T.C. Docket No. 9299
SUBPOENA DUCES TECUM ISSUED ON BEHALF OF
RESPONDENT MSC SOFTWARE CORPORATION

Unless modified by agreement with Respondent MSC Software Corporation (hereinafter "MSC"), each specification of this Subpoena requires a complete search of "your company" as defined in Paragraph "1" of the Definitions, which appear after the following Specifications.

If you have any questions, or if you believe that the required search or any other part of the Subpoena can be narrowed in a way that is consistent with MSC's need for documents and information, you are encouraged to discuss such possible modifications with the MSC attorney identified on the front page of this Subpoena within one week of your first receipt of this Subpoena. Counsel for MSC is prepared immediately to discuss reasonable means of limiting the scope of any required search for responsive documents and any other reasonable modifications of this Subpoena in a desire to minimize the cost, expense, and time required to comply with this Subpoena, including but not limited to agreeing to fact stipulations in the form of sworn declarations.

To facilitate the speed of your response, defendants request that documents be produced as their responsiveness is identified. Defendants are prepared to provide third party temporary lawyers and legal assistants - at MSC's expense but under ANSYS's control - to assist in the search for responsive documents. Defendants will make persons available at any and all document production sites to take receipt of and copy responsive documents, or to arrange for copying under ANSYS's control.

SPECIFICATIONS

In accord with the Definitions and Instructions, please provide the following:

1. One copy of each organization chart and personnel directory in effect since January 1, 1997, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any Relevant Product or Service.
2. Documents sufficient to identify, for each year, all personnel responsible for, or involved in, (1) the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service; or (2) financial reporting, accounting, analysis for the company.
3. All documents relating to MSC.
4. All documents relating to CSAR.
5. All documents relating to UAI.

6. All documents relating to SAS, Harry G. Schaeffer, Richard H. McNeal, or Michael J. Krauski.
7. All documents relating to Nastran-based FEA solvers.
8. All documents relating to any communications with any third-party concerning MSC's acquisitions of CSAR and UAI or the FTC's investigation or litigation concerning MSC's acquisitions of CSAR and UAI.
9. All documents relating to any communications with the Federal Trade Commission concerning any Relevant Product or Service, MSC's acquisitions of CSAR and UAI, or any actual or potential customer of any Relevant Product or Service.
10. All documents relating to any plan, decision, or effort by ANSYS to offer or develop a Nastran-based FEA Solver.
11. For the company as a whole and for each business unit, product line, and product, one copy of each quarterly or annual budget financial statement, income statement, balance sheet, operating reports, capital investment plans, financial plan or forecast, sales plan or forecast, revenue plan or forecast.
12. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any Relevant Product or Service, or to computer aided engineering products and services in general.
13. All documents relating to any communications concerning any Relevant Product or Service between or among the company and Daratech or any individual stock analyst or other person engaged in, or associated with, the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.
14. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee concerning any Relevant Product or Service, including:
 - a. all announcements of, agendas for, and minutes of any meeting;
 - b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and
 - c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.

15. All annual or multi-year business or strategic plans prepared by or for an Officer or Director of ANSYS for purposes of analyzing competition for any Relevant Product or Service.
16. All documents relating to (i) plans or activities by any company other than ANSYS to develop, market, or sell any Relevant Product or Service, or (ii) ANSYS's interpretation, analysis, response, reaction, or plans to coordinate, join, or investigate such company's activities or plans.
17. All documents relating to prices of any Relevant Product or Service, excluding actual invoices and signed contracts, but including (i) documents referring to negotiations or bidding for any Relevant Product or Service, (ii) summaries or reports of pricing by ANSYS or any other provider of any Relevant Product or Service; and (iii) documents discussing future pricing plans or projections or historical pricing; and (iv) methodologies, formulae, practices, or policies for determining actual or offered prices.
18. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any Relevant Product or Service, including all documents relating to:
 - a. the market share or competitive position of the company or any of its competitors;
 - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any Relevant Product or Service;
 - c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any Relevant Product or Service;
 - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any Relevant Product or Service;
 - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;
 - f. the effects of competition from any supplier of any Relevant Product or Service, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
 - g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
 - h. the use of unlimited usage agreements and paid-up licenses.

19. All documents relating to switching, including shifts in utilization, between or among any Relevant Product or Service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.
20. All documents relating to actual, attempted, or potential entry into the market for any Relevant Product or Service, including the actual or expected cost likelihood, form and timing of such entry.
21. All documents relating to the design, development, marketing, sale or announcement of any MSC.Nastran product for Windows, and all documents relating to any response, plans, change in strategy or conduct by ANSYS as a result of MSC's offering of an MSC.Nastran for Windows product.
22. Documents sufficient to show, for each year, the number of people involved in (i) technical support, and (ii) research and development; and all documents relating to the need or desire to hire, or the difficulties or issues associated with hiring, additional personnel to assist in research and development activities or technical support.
23. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any Relevant Product or Service.
24. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular Relevant Product or Service.
25. Documents sufficient to identify or describe, for each year, the customers who purchased any Relevant Product or Service from ANSYS, the products such customers purchased, the

amount of such purchases, and the projects for which such products or services were used.

26. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Relevant Product or Service for the period January 1, 1997, to the present, including:
- a. the date of transaction,
 - b. the amount of the transaction,
 - c. the quantity,
 - d. the type and duration of the contract or license,
 - e. a description of each product or service licensed or sold (including product number or code),
 - f. the contract number,
 - g. the location, including physical address and serial number, of the computer where the software is located or service rendered,
 - h. the SIC code, trade or industry category, and business group of the customer, and
 - i. the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.
27. For each Relevant Product or Service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.
28. Documents sufficient to describe each Relevant Product or Service offered by ANSYS, including the functionality of each such product or service and the types of projects for which each such product or service is suitable.
29. Documents sufficient to show or describe the following:
- a. all document retention and destruction systems, policies, procedures, and practices of the company (including all documents sufficient to identify each instance where the company's document retention policy has not been followed);
 - b. the persons responsible for managing such systems, policies, procedures, or capabilities;

- c. all electronic data and document management information systems of the company;
- d. all network-accessible documents, information and financial data systems;
- e. all backup procedures; and
- f. the process and cost of recovery of backup files, including documents sufficient to show:
 - (i) the cost of recovery of backup files generally; and
 - (ii) the cost of recovery of backup files containing documents responsive to this document Subpoena.

DEFINITIONS

1. The term "the company" or "ANSYS" means ANSYS, Incorporated, its domestic and foreign parents, predecessors, successors, divisions, and wholly or partially owned subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, consultants, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by the company.
2. The term "MSC" means MSC Software Inc. or any of its officers, directors, employees, consultants, or agents to the extent such individuals are acting on behalf of MSC Software, Inc.
3. The term "UAI" means Universal Analytics, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
4. The term "CSAR" means Computerized Structural Analysis and Research Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
5. The term "SAS" means Shaeffer Automated Simulation, LLC, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.
6. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents"

includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans, engineering blueprints, and source code.

7. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
8. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
9. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are desired as a basis for providing the requested information, MSC is prepared to discuss the form and content of such summaries, compilations, lists, or synopses in order to minimize burden.
10. The terms "and" and "or" have both conjunctive and disjunctive meanings.
11. The terms "each," "any," and "all" mean "each and every."
12. The term "including" means including but not limited to.
13. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
14. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
15. The term "agreement" or "contract" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
16. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
17. The term "Relevant Product or Service" as used herein means any software product that contains FEA software (either as a stand-alone product or embedded as part of a broader software product) and any services provided in connection with or relating to FEA software,

including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation. The term "Relevant Product or Service" also includes all computer aided design (CAD) software that functions as a FEA software.

18. The term "Nastran" means all software products, regardless of platform on which the software operates, based in whole or in part on the Nastran code or Nastran kernel developed originally either by the National Aeronautical and Space Administration ("NASA") or by any person acting pursuant to a development contract with NASA, and includes any program released into the public domain by NASA or the University of Georgia; all value-added enhancements, features, modules, applications, applications programming interfaces, programming languages, and Direct Matrix Abstraction Programming ("DMAP") for any Nastran product; all products that integrate or combine Nastran with any other product; and all services relating to Nastran, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation for Nastran products. The term also includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, Working Model, Elfini, GPS, Cosmos, or any other solver licensed or sold by MSC.
19. The term "FEA software" means all software products offering finite element analysis, including Nastran, regardless of platform on which the software operates, and includes all value-added enhancements, features, modules, applications, applications programming interfaces, and programming languages for the software, all products that integrate or combine the FEA software with any other product, and all services relating to maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, training, and hot line and 1-800 consultation for FEA products. The term "FEA software" includes, but is not limited to, software that has embedded FEA solver functionality, or any computer aided design (CAD) software that competes with can be perform functions similar to an FEA solver.
20. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
21. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

INSTRUCTIONS

1. Except for privileged material, the company shall produce each responsive document in its

entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company shall not mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.

2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1997.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company must submit legible copies. However, if the coloring of any document communicates substantive information, the company must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that counsel for MSC determine prior to submission that it would be in a format that allows them to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
5. Magnetic media shall be submitted in the following forms and formats:
 - a. Magnetic storage media. counsel for MSC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). Counsel for MSC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system, counsel for MSC will accept data provided on 8mm DAT created using TAR or DD.
 - b. File and record structures.
 - (i) Magnetically-recorded information from centralized non-microcomputer-based systems:

- (a) File structures. Counsel for MSC will accept sequential files only. All other file structures must be converted into sequential format.
 - (b) Record structures. Counsel for MSC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.
- c. Documentation.
- (i) Data must be accompanied by the following information:
 - (a) full path name of the file; and
 - (b) the identity of the media on which on which it resides, *e.g.* the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.
 - (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
 - (iii) For all sequential files, the documentation also must include:
 - (a) the number of records contained in the file;

- (b) the record length and block size ; and
- (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

- d Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
 - e Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. As to Specification No. 26, submit all computer data in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wk1) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record.
 7. The company shall mark each submitted page or sheet with its corporate identification, i.e., ANSYS, and with consecutive document control numbers.
 8. Responsive documents from each person's files shall be produced together in file folders that segregate the person's files. Documents responsive to Specification No. 16 shall be produced in file folders segregated by customer and in chronological order within each customer file.
 9. For each box containing responsive documents the company shall:
 - a. number each box; and
 - b. mark each box with the name(s) of the person(s) whose files are contained in that box, and the corresponding consecutive document control numbers for each such person's documents.
 10. Where identical copies are found in more than one person's files, the company must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.
 11. If it is claimed that any document, or portion thereof, responsive to any request or Specification is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:

- a. the reason for withholding it or other information relating to it;
- b. the author and date of the document;
- c. each individual to whom the original or a copy of the document was sent;
- d. each individual who received the original or a copy of the document;
- e. the date of the document or oral communication;
- f. the general subject matter of the document;
- g. the relevant document request or Specification the document is responsive to;
- h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names of parties, case number, and the date of the complaint filing; and
- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer of firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of the pages of each document and shall describe the nature of each document in a manner that, without revealing information itself privileged or protected, will enable counsel for MSC to assess the applicability of the privileged or protection claimed. Any part of a document to which you do not claim privilege or work product should be produced in full.

12. If there are no documents responsive to any particular request or Specification, the company shall state so in its answer to the document request or Specification.
13. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
14. In lieu of original documents, the company may submit legible copies of documents so long as the company verifies with the attached form that they fully and accurately represent the originals.

15. To furnish a complete response, the person supervising compliance with this Subpoena must submit a signed and notarized copy of the attached verification form along with the responsive materials.

1. The first part of the document is a list of names and titles, including the names of the authors and the titles of their works. This list is organized in a structured manner, likely serving as a table of contents or a reference list for the document.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____))
IN THE MATTER OF))
MSC.SOFTWARE CORPORATION,)) Docket No. 9299
a corporation))
_____)

**AFFIDAVIT OF DAVID S. SECUNDA IN SUPPORT OF THIRD-PARTY ANSYS INC.'S
MOTION TO EXTEND TIME TO RESPOND AND/OR MOVE TO LIMIT OR QUASH
SUBPOENA DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION**

Commonwealth of Pennsylvania)
Allegheny County) ss:

DAVID S. SECUNDA, being duly sworn, deposes and says:

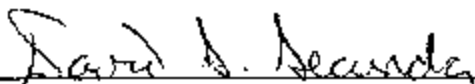
1. My name David S. Secunda. I am employed as the Corporate Counsel and Secretary of ANSYS, Inc. ("ANSYS").
2. ANSYS has 11 active subsidiaries and, with its subsidiaries, employs 440 employees in 21 offices. Fourteen of those offices are located outside the United States.
3. I have reviewed the Subpoena *Duces Tecum* issued on behalf of MSC Software Corporation ("MSC") and served on ANSYS in the above captioned matter (the "Subpoena"), which was received by registered mail on December 20, 2001.
4. Applying literally the "Definitions" and "Instructions" in the Subpoena, the Subpoena calls for production of documents relating to virtually all of ANSYS' products,

without geographic limitation, even though many of ANSYS' products, and most of ANSYS' operations, are not material to the issues in this litigation.

5. Conducting an evaluation of the potentially responsive documents and information during the period prior to January 1, 2002 would substantially interfere with numerous important year-end business activities of ANSYS, including the procurement and recording of orders for our products. The fourth quarter of the calendar regularly represents for ANSYS the largest sales volume of any quarter of the year, making it the busiest of the year for our employees in both obtaining and booking those revenues. Moreover, as is common throughout the nation, many of our employees schedule vacation time during the last ten days of the year in order to spend the holidays with their families.

6. Due to the above-described year-end activities, ANSYS employees do not have time, prior to the new year, to assist in adequately evaluating the burdens and other issues associated with responding to the Subpoena. For the same reasons, ANSYS employees not have time, prior to the new year, to assist in locating documents and information responsive to the Subpoena. January 31, 2002 is a reasonable deadline for the above activities.

FURTHER, affiant sayeth not.



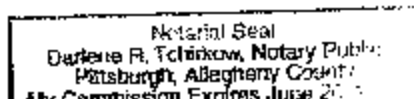
David S. Secunda

Sworn to and subscribed before
me this 2nd day of December, 2001:



[Notary Public]

My commission expires:



CERTIFICATE OF SERVICE AND ELECTRONIC FILING

The undersigned certifies that a true and correct copy of the foregoing **THIRD-PARTY ANSYS, INC.'S MOTION TO EXTEND TIME TO RESPOND AND/OR MOVE TO LIMIT OR QUASH SUBPOENA DUCES TECUM SERVED BY MSC.SOFTWARE CORPORATION** was served this 28th day of December, 2001, on the following persons in the manner indicated:

Via Facsimile and First Class Mail:

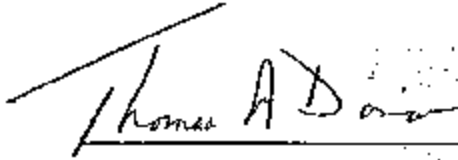
Tefft W. Smith, Esq.
Kirkland & Ellis
655 15th Street, NW
Washington, DC 20005

P. Abbott McCartney
Bureau of Competition
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Suite 3033
Washington, DC 20580

Via Hand Delivery:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Washington, DC 20580

and that a true and correct electronic copy of the same, minus exhibits, was transmitted to the Secretary of the Commission.



Thomas A. Dora